continues his employment with knowledge of unusual dangers caused by the employer's negligence, without receiving a promise to remove them, has as a matter of law, voluntarily assumed the risk. *Lamson* v. *American Axe & Tool Co.*, 177 Mass. 144, 58 N. E. 585; *St. Louis Cordage Co.* v. *Miller*, 126 Fed. 495; but see 27 HARV. L. REV. 284. In England, however, whether or not the assumption was voluntary is a question of fact for the jury. *Smith* v. *Baker*, [1891] A. C. 325. And the jury may take into account the economic pressure on the servant caused by fear of losing his position. *Yarmouth* v. *France*, 19 Q. B. D. 647. See *Walsh* v. *Whiteley*, 21 Q. B. D. 371, 374. In adopting both phases of the English view, the principal case marks a material departure from previous federal decisions. *McPeck* v. *Central Vt. Ry. Co.*, 79 Fed. 590. Under Section 4 of the Federal Employers' Liability Act, if the employer's negligence consists in the breach of a statutory duty, the defense of assumption of risk is expressly excluded. U. S. COMP. STAT. SUPP. 1911, p. 1323. But where, as in the principal case, the negligence violates no statute, there has been some conflict as to whether or not the defense is still available. A recent United States Supreme Court decision, however, settled the dispute in favor of allowing the defense. *Seaboard Air Line Ry.* v. *Horton*, U. S. Sup. Ct. No. 691, April 27. See cases collected in 47 L. R. A. N. S. 38, 62. The decision in the principal case, however, will certainly reduce its application to a minimum, for as a practical matter the employee's assumption of risk will seldom be found truly voluntary.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACT — INJURY OCCURRING "IN THE COURSE OF" AND ARISING "OUT OF" EMPLOYMENT. — The deceased was engaged as a seaman under articles in which the Board of Trade compulsory scale of diet was struck out, and a provision that the crew should provide their own provisions substituted. The deceased went ashore for provisions and was drowned while returning. *Held*, that the accident did not arise out of the employment since there was no contractual obligation that deceased should provide his food. *Parker* v. *Owners of Ship Black Rock*, 136 L. T. J. 375 (Ct. App., Feb., 1914).

The deceased was employed as drayman continuously from eight A.M. till eight P.M., with no interval for meals. He left his team to get a glass of beer, and was killed by a motor car while returning. *Held*, that the accident arose out of the employment, since thus leaving the team was a reasonable incident thereof. *Martin* v. *Lovbond & Co.*, 136 L. T. J. 402 (Ct. App., Feb., 1914).

The English cases have generally held an accident to arise "out of" the employment when it results from a risk incidental to the employment as distinguished from a risk common to all mankind. See 27 HARV. L. REV. 390. A sailor who must depend upon his own efforts to secure food seems, because of his employment, peculiarly subject to the risks attendant on going ashore. More doubtful is the unique character of the risk incurred by the drayman of injury from passing motor cars. It is, however, a risk incidental to his employment, and the more likely to happen by reason of the same; and allowing recovery seems fully in accord with the spirit of the legislation. For discussion of this question see article by Professor Bohlen in 25 HARV. L. REV. 328–348, 401–427, 517–547.

MASTER AND SERVANT — WORKMEN'S COMPENSATION ACTS — WHETHER OCCUPATIONAL DISEASE IS A "PERSONAL INJURY." — As the result of continuous exposure to furnace gases in the course of his employment, the plaintiff contracted a disease which destroyed his eyesight. The Workmen's Compensation Act provided for compensation for "personal injury arising out of and in the course of the employment." *Held*, that the plaintiff is entitled to compensation. *In re Hurle*, 104 N. E. 336 (Mass.).

The principal case decides an important practical question. At common law, disease or injured health would sustain an action for personal injury if the other elements of tort liability were present. *Hunt* v. *Lowell Gas Light Co.*, 8 Allen (Mass.) 169. Accordingly, under the English Workmen's Compensation Act, a disease caused by the employment where there has been no perceptible contact, has been held to fall within the definition of personal injury. *Brintons* v. *Turvey*, [1905] A. C. 230. The phrase "by accident," contained in the English statute, has led to a qualification that the injury must be sustained on a particular occasion, the date of which can be fixed. *Broderick* v. *London County Council*, [1908] 2 K. B. 807. In the absence of such words it would seem correct to permit recovery, as in the principal case, for a disease of gradual growth caused by the conditions of the employment.

MORTGAGES — TRANSFER OF RIGHTS AND PROPERTY — WHETHER RELATIVE OF MORTGAGEE BUYING FROM PURCHASER WITHOUT NOTICE IS RELEGATED TO MORTGAGEE'S POSITION. — The defendant church corporation gave the plaintiff a mortgage on certain property which was not recorded. A subsequent mortgage was given by the church, covering that property, and by certain members, covering their own property. This later mortgage was recorded and assigned to a *bonâ fide* purchaser who had no knowledge of the prior unrecorded mortgage. He later assigned to the other defendants, the brother and wife respectively of the mortgagor members. These assignees, without consideration, released the property of the members covered by the mortgage. *Held*, that the holder of the prior unrecorded mortgage, in preference to the holder of the recorded mortgage, may exact full payment of his mortgage debt out of the church property. *Rogis* v. *Barnatowich*, 89 Atl. 838 (R. I.).

The policy of recording statutes is to avoid unrecorded instruments only as against third parties without notice. *National Mut. Building & Loan Ass'n* v. *Blair*, 98 Va. 490, 36 S. E. 513. Accordingly, an unrecorded mortgage prevails against a subsequent recorded mortgage held by one with notice. *Matthews* v. *Everitt*, 23 N. J. Eq. 473. But it seems that the well-established proposition, that one who takes with notice is protected by the good faith of his assignor, should apply in the principal case. *Lowther* v. *Carlton*, 2 Atk. 242; see *Mott* v. *Clark*, 9 Pa. St. 399, 404; *Rutgers* v. *Kingsland*, 7 N. J. Eq. 178, 184. The court argues that this doctrine has no application here because of the equally well-recognized principle that one subject to an equity cannot better his position by re-acquiring through a *bonâ fide* purchaser. *Church* v. *Church*, 25 Pa. St. 278. But it is submitted that the mere fact of close relationship is not enough, that to create this situation, the reassignment, though nominally to a stranger, must be in substance to the party formerly holding with notice. The decision can, however, be rested on the doctrine of marshalling assets. Granting that the individual defendants are in the position of *bonâ fide* purchasers so as to give their mortgage priority, yet, in releasing their exclusive security with knowledge that the remaining security was probably insufficient to satisfy both claims, they have knowingly deprived the plaintiff of an equitable right to marshall them against the property so released. It is only fair, therefore, that their prior rights in the church property should be postponed to those of the plaintiff. *Jordan* v. *Hamilton County Bank*, 11 Neb. 499, 9 N. W. 654; *Gore* v. *Royse*, 56 Kan. 771, 44 Pac. 1053. See 18 HARV. L. REV. 453.

PARDONS — EFFECT — FEDERAL PARDON AFTER FIRST CONVICTION NOT PREVENTING SUBSEQUENT CONVICTION AS SECOND OFFENDER. — A statute provided that one who was twice convicted of felony should, upon a second conviction, suffer an increased penalty. The defendant received a pardon from